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XIV. Agreement With Great Britain Regarding Problems of Marine Transportation and Litigation

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An agreement between the United States and Great Britain on certain problems of marine transportation and litigation was signed by the American Ambassador in London, Mr. John G. Winant, and the British Foreign Secretary, Mr. Anthony Eden, on December 4, 1942. This agreement is another example of the close cooperation between the two Governments in the prosecution of the war. It is abundantly clear that merchant shipping is at the nerve center of the whole war effort. This agreement aims at eliminating losses of tonnage and manpower in useless litigation. In general, each Government has agreed to waive claims against the other arising out of collisions, damage to cargo, and the rendering of salvage services. In the end, of course, with two great fleets such as ours the litigation proves useless. Recoveries tend to even themselves out. No financial advantage is gained by either Government, but much essential manpower is lost in the process.

Ordinarily a casualty at sea involves the expenditure of much time and skilled manpower in assessing the amounts payable by the various parties interested in both ship and cargo. Delays occur and frequently ships are threatened with arrest or even actually arrested in order that

security may be provided for meeting the claims asserted.

All this is now a thing of the past where the interests involved are those of the British and United States Governments. In future, if a collision occurs between a ship belonging to the one Government (whether warship or merchantman) and a ship belonging to the other Government, no legal proceedings will be taken to determine the degree of blame and no claims for damages will be made by either Government against the other. The work of repair will be undertaken at once without thought of anything but getting the damaged ship back into service in the war effort at the earliest possible moment.

Nor where cargoes belonging to one Government are damaged while on board a ship belonging to the other Government will time be wasted in the future in determining the liability for such damage. General average contributions will not be payable by the one Government to the other.

Another interesting feature of the agreement is that in the future all salvage services rendered by either Government to the ships or cargo owned or insured by the other will be rendered on lend-lease terms, each Government paying its own nationals. The sole object of salvage services rendered will be to bring the ship or cargo salvaged back into service as rapidly as possible without regard to any financial considerations.

Article IV of the agreement is a further example of close cooperation. Either Government may call upon the other for legal assistance where vessels or cargo owned by the one Government

are threatened with arrest in the courts of the other. Where a request is made for such assistance the Treasury Solicitor in the United Kingdom and the Attorney General in the United States will make arrangements for the immediate release of the ship and for the protection of the interests of the other Government. Clearly it is of as much interest to the United States that British ships sail as that American ships sail, and vice versa. All are equally devoted to the common cause. This article means to insure that there will be no delays.

It will be observed that the provisions of the agreement regarding waiver of claims relate only to claims of one Government against the other and do not apply to claims between either Government and private interests.

The texts of the agreement and of an exchange of notes in connection therewith follow.

The Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland being desirous of defining, in so far as certain problems of marine transportation and litigation are concerned, the manner in which shall be provided mutual aid in the conduct of the war including the aid contemplated by the Agreements concluded between them at Washington on the 23rd February, 1942, and the 3rd September, 1942, have agreed as follows:

ARTICLE 1

(1) Each contracting Government agrees to waive all claims arising out of or in connection with negligent navigation or general average in

respect of any cargo or freight owned by such Government and in respect of any vessel (including naval vessel) owned by such Government against the other contracting Government or any cargo, freight or vessel (including naval vessel) owned by such other Government or against any servant or agent of such other Government or in any case where such other Government represents that such claim if made would ultimately be borne by such other Government.

(2) Each contracting Government agrees on behalf of itself and of any organisation which is owned or controlled by it and operating for its account or on its behalf to waive all claims for salvage services against the other contracting Government or against any cargo, freight or vessel (including naval vessel) owned by such other Government or in any case where such other Government represents that such salvage claim if made would ultimately be borne by such other Government.

(3) Each contracting Government agrees to waive all claims for loss of or damage to cargo owned by such Government and arising out of the carriage thereof or for loss of or damage to any cargo or vessel owned by one contracting Government and caused by the shipment or carriage of cargo owned by the other contracting Government against such other Government or against any servant or agent of such other Government or against any vessel (including naval vessel) owned by such other Government or in any case where such other Government represents that the claim if made would ultimately be borne by such other Government.

(4) Each contracting Government undertakes not to make any claim in respect of any vessel or cargo insured by it to which it may be entitled by virtue of any right of subrogation either—

(a) directly against the other contracting Government; or

(b) in any case where such other Government represents that such claim if made would ultimately be borne by such other Government.

(5) Each contracting Government agrees to extend the principles of this Agreement to such other maritime claims as may from time to time be agreed between them.

ARTICLE 2

Where in any case claims arise which are not required to be waived by this Agreement in addition to or in conjunction with claims which are so required to be waived and it is necessary in any proceedings including proceedings for the limitation of liability that claims be marshalled or for the proper assessment of any salvage or general average that values should be estimated, the provisions of this Agreement shall not apply but claims which would otherwise be required to be waived under this Agreement shall be asserted. Any recoveries, however, shall be waived by the Government entitled to such recoveries or at the option of such Government shall be dealt with in such other way as will give effect to the purposes of this Agreement.

ARTICLE 3

(1) For the purpose of this Agreement the expression "vessel owned by a contracting Gov-

ernment'' includes a vessel on bare boat charter to a contracting Government or requisitioned by a contracting Government on bare boat terms or otherwise in the possession of a contracting Government (except to the extent that the risk of loss or liability is borne by some person other than either contracting Government).

(2) In order to carry out the full intention of the provisions of Article 1 of this Agreement each contracting Government will so arrange in connection with bare boat charters to it that the owners or persons interested through such owners shall not have or assert any claims of the character specified in Article 1.

ARTICLE 4

Each contracting Government upon the request of the other will provide undertakings for the release of vessels or cargo owned by the other contracting Government from judicial proceedings in Courts in the United States of America or in the United Kingdom as the case may be where such release will promote the war effort and the requesting Government so represents, upon compliance with the following conditions:

(a) upon the tender of such request due authority will be conferred by the Government interested in such vessel or cargo upon the law officers of the Government furnishing the undertaking to appear on their behalf and to conduct the defence of such proceedings in so far as such vessel or cargo is concerned, to settle or compromise any such suit, to assert or settle and compromise any claim to which the requesting Government may be entitled

in respect to the subject matter of the suit and to make and receive payments in respect thereof; and

(b) the requesting Government upon tendering such a request will assure the other Government of its full co-operation in making defence to such suit and asserting such claims including the making available of witnesses and evidence and including preparation for trial.

Unless otherwise agreed, each contracting Government will reimburse or account to the other for any payment made or received by the one Government on behalf of the other.

ARTICLE 5

Nothing in this Agreement shall be construed as a waiver of the right of either contracting Government in appropriate cases to assert sovereign immunity.

ARTICLE 6

(1) This Agreement, which shall come into force on the date of signature, shall apply in respect of all claims arising before the date of this Agreement but remaining unsettled at such date or which may arise during the currency of this Agreement.

(2) This Agreement shall remain in force until the expiration of six months from the date upon which either of the contracting Governments shall have given notice in writing of their intention to terminate it.

IN WITNESS WHEREOF the undersigned, duly authorized to that effect by their respective Govern-

ments, have signed the present Agreement and have affixed thereto their seals.

DONE in London in duplicate, this fourth day of December, 1942.

Exchange of Notes Between the American Ambassador and the British Foreign Secretary

DECEMBER 4, 1942.

SIR:

With reference to Article IV of the agreement signed today between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America relating to certain problems of maritime transportation and litigation, I have the honor to state that for the present and until further notice it is the intention of my Government that the accounting contemplated by that Article will be accomplished under the Act of Congress of March 11, 1941 to the extent authorized under that Act.

Accordingly, the Government of the United States will in appropriate cases make such payments as are necessary in the course of operations under the agreement according to its procedure in the administration of that Act and will receive any moneys which may accrue in the course of such operations as a benefit under that Act and Article VI of the agreement between our two Governments dated February 23, 1942.

Accept [etc.]

JOHN G. WINANT